

**City of Fergus Falls
Job Opportunity Building Subzone Policy
Approved by City Council on March 1, 2004 and
Amended 12/20/2004**

A. Introduction

The Job Opportunity Building Zone (JOBZ) was created during the 2003 legislative session to provide rural Minnesota with an economic development tool to stimulate growth in rural areas. Job Opportunity Building Zones, also known as Tax Free Zones, provide specified tax exemptions to qualified businesses that start-up, expand, or relocate to rural Minnesota.

The City of Fergus Falls (City) and Fergus Falls Area Economic Improvement Commission (EIC) will consider the use of JOBZ to promote economic development within the City and review each application on a case-by-case basis to provide tax exemptions and benefits. It is anticipated that all approved Fergus Falls JOBZ Subzone projects will meet the definition of a business subsidy and be subject to Minnesota Statutes 116J.993 through 116J.995.

B. Intent

The purpose of the Fergus Falls Job Opportunity Building Subzone Policy is to provide a uniform set of standards and procedures for the City and EIC to follow when designating and utilizing the tax exemptions in conjunction with Minnesota Statutes 469.310 to 469.320. The tax free zones allow local units of government the opportunity to exempt qualified businesses from specific local and state taxes.

The City participated in a regional application with West Central Initiative for one tax free zone for west central Minnesota. The City and EIC will use this policy to establish the local control and review of the approved Fergus Falls JOBZ Subzone.

C. Application Process

A business that wishes to receive tax exemptions and credits in the Fergus Falls JOBZ Subzone must complete an application and submit appropriate historical information regarding the company.

D. Staffing

Staffing for the JOBZ program will be provided by the EIC and Fergus Falls Port Authority. Staff will assist applicants in structuring the subsidy package to coordinate with non-subsidy programs, bank involvement, equity, and other necessary components. Staff will assist applicants in completing the necessary documentation for the subsidy.

E. Qualifying For Exemptions And Credits

To meet the goals of the City, the potential Fergus Falls JOBZ Subzone property must be zoned or planned to be zoned industrial per Chapter 7, Fergus Falls City Code. The only exception is an area zoned commercial that has rehabilitation needs.

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2. The applicant must be a Qualified Business, defined as follows:

Minnesota Statutes 469.310, Subdivision 11, define a qualified business as a person carrying on a trade or business at a place of business located within a job opportunity zone.

The City further defines a qualified business as an industrial manufacturing/assembly business, value-added business or a high paying service business. (Amended 12/2004) Retail establishments are not considered a qualified business.

A business is also not considered to be a "qualified business" until it enters into a Business Subsidy Agreement with the City. In the case of relocation, a business is not a "qualified business" until it enters into a Business Subsidy Agreement with the City AND enters into a Relocation Agreement with the Department of Employment and Economic Development (DEED).

Qualified businesses that must receive tax exemptions or credits include:

- Qualified businesses located in and operating in the Fergus Falls JOBZ Subzone at the time of Subzone designation;
- Qualified business startups locating in the Fergus Falls JOBZ Subzone;
- Qualified business expansions in the Fergus Falls JOBZ Subzone (as long as a business maintains its current operations in its current location and is expanding its operations *and* its payroll within a Fergus Falls JOBZ Subzone);
- Qualified business relocations from another state;
- Qualified business relocations from another Minnesota non-Zone location, but only if the qualified business:
 - a. Ceases one or more operations or functions at a non-Zone location and begins performing substantially the same functions inside the Fergus Falls JOBZ Subzone; or
 - b. Reduces employment at the non-Zone location starting one year before and ending one year after beginning operations in the Fergus Falls JOBZ Subzone and its employees in the Fergus Falls JOBZ Subzone are engaged in the same line of business as the employees at the location where it reduced employment; and
 - c. Commits in writing to increase full time employment by 20% (measured relative to the operations that were relocated) within the first full taxable year of operation within the Fergus Falls JOBZ Subzone and maintains the required level of employment during each year of subzone designation; or
 - d. Commits in writing to make a capital investment during the first full taxable year of operation in the Fergus Falls JOBZ Subzone equivalent to at least 10% of gross revenues for the taxable year immediately preceding relocation to the Fergus Falls JOBZ Subzone.

Additional requirements for the Fergus Falls JOBZ Subzone:

The qualified business must create employment opportunities within the Fergus Falls subzone boundaries. Job goals will be established.

The established wage floor for jobs created in the Fergus Falls JOBZ Subzone is as follows:

Combined wages and benefits must equal 110% of the federal poverty level for a family of four. (That number is currently \$9.73, but is subject to change annually). Benefits are defined as health insurance, life insurance, dental insurance, retirement, profit sharing, output bonus, plus other benefits not mandated by law.

Job and wage goals will **not** be set at zero.

Specific job and wage goals must be met within a specific timeframe. However, reporting requirements will exist throughout the entire term of the Fergus Falls JOBZ Subzone to ensure that job and wage goals are maintained.

The City and EIC will not consider applications from qualified businesses receiving Tax Increment Financing or Tax Abatement, nor will qualified businesses approved for the Fergus Falls JOBZ Subzone receive Tax Increment Financing or Abatement.

Fergus Falls JOBZ Subzone Applicants are required to consult with the City's Engineer and the City's Building and Zoning Officials to assure that their project meets all necessary requirements of those departments.

The qualified business agrees **not** to compete with or displace local businesses currently operating within the subzone community.

Subsidies must meet a public purpose including, but not limited to: to enhance economic diversity, create high-quality job growth, stabilize the community, increase tax base or address other urgent community development needs.

F. Eligible Exemptions and Credits

According to Minnesota Statute 469.315, the following exemptions are provided to a qualified business

- Exemption from individual income taxes (MS 469.316).

Exemption from corporate franchise taxes (MS 469.317).

Exemption from state sales and use tax and any local sales and use taxes on qualifying purchases (MS 297A.68, sub 37).

- Exemption from state sales tax on motor vehicles and any local sales tax on motor vehicles (MS 297B.03).
- Exemption from property tax (MS 272.02, sub 64). The exemption applies beginning for the first assessment year after designation of the job opportunity building zone by DEED. The exemption applies to each assessment year that begins during the duration of the job opportunity building zone and to property occupied by July 1 of the assessment year by a qualified business.
- Exemption from the wind energy production tax (MS 272.029, sub 7).

Jobs credit (MS 469.318).

Qualified businesses will be eligible for exemptions for a maximum duration of a twelve (12) year period, commencing January 1, 2004, and ending December 31, 2015.

G. Approval Process

The EIC Executive Director will have the responsibility of making a finding, based upon the application and information presented by a qualified business, as to whether the project meets the statutory criteria for extending tax exemptions and benefits. Final approval is required by the Fergus Falls City Council. Therefore, a recommendation will be presented by EIC to the Fergus Falls City Council at the required public hearing (see Section H below). At this public hearing, approval of a Business Subsidy Agreement (see I below) will be requested.

H. Public Notice and Hearing

Before granting a subsidy that exceeds \$100,000, the City must provide public notice and a hearing on the subsidy. A public hearing and notice under this section is not required if law otherwise requires a hearing and

notice on the subsidy. A public hearing notice must be published in the City's legal paper at least ten (10) days prior to the public hearing, and if possible on the Internet. The public hearing notice must include the date, time and place of the hearing. The notice must also identify the location at which information about the subsidy, including a summary of the terms of the subsidy, is available. The City must make the information available in printed-paper copies, and if possible, on the Internet.

I. Business Subsidy Agreement

The Business Subsidy Agreement with the City must include:

- a description of all subsidies, including the amount and type of subsidy, as well as the terms and who provided the subsidy.
- a statement of the public purposes for the subsidy;
 - a description of the measurable, specific, and tangible goals for the subsidy. There should be separate goals for the number of part-time or full-time jobs to be created, or, in cases where job loss is specific and demonstrable, goals for the number of jobs retained; wage goals for any jobs created or retained; and wage goals for any jobs to be enhanced through increased wages. The job and wage goals should contain specific goals to be attained during a specific timeframe and indicate that these goals are to be maintained during the entire term of the Fergus Falls JOBZ Subzone.
- a description of the financial obligation of the qualified business to repay all JOBZ related tax benefits obtained if the goals are not met and as defined in Minnesota State Statutes 469.319.
- a description of the financial obligation of the qualified business to repay other business subsidies provided to the qualified business as governed by the Business Subsidy statute and to repay tax benefits obtained if the goals are not met, and as defined in Minnesota State Statutes 116J.994 Subd. 6.
- a commitment by the qualified business to continue operations in the jurisdiction where the subsidy is used for the duration of the Fergus Falls JOBZ Subzone.

the name and address of the parent corporation of the qualified business, if any; and

In addition:

- a qualified business agrees to furnish to the City, on or before March of each year, an annual business subsidy report (see Section J).
- Before the City signs a business subsidy agreement, the City must check with the DEED compilation and summary report to determine if the qualified business is eligible to receive a subsidy.
- Benefit date is defined as the date after which tax benefits shall begin to accrue to the qualified business; and shall mean the "Operations Start Date" for a qualified relocating business.

J. Annual Reporting

The City must annually report to DEED on the progress of the qualified business in meeting performance goals and its compliance with the Business Subsidy Law (MS 116J.993 to 116J.995). The qualified business must provide information to the City, on forms developed and made available by DEED, regarding goals and results throughout the term of the Fergus Falls JOBZ Subzone. If the goals are not met, the qualified business must continue to provide information on the JOBZ subsidy until the subsidy is repaid (see Section K).

This information must be received from the qualified business no later than March 1 of each year for the previous year.

- the type, public purpose and amount of subsidies;
- the hourly wage of each job created with separate bands of wages;
the sum of the hourly wages and cost of health insurance provided by the qualified business with separate bands of wages;
- the date the job and wage goals will be reached;
- a statement of goals identified in the subsidy agreement and an update on achievement of those goals;
- the location of the qualified business prior to receiving the subsidy;
- why the recipient did not complete the project outlined in the subsidy agreement at their previous location, if the recipient was previously located at another site in Minnesota;
- the name and address of the parent corporation of the qualified business, if any;
- a list of all financial assistance for the project and who provided the assistance;
- the amount of private capital investment by the qualified business; the amount of property tax assessment not collected for the property where the qualified business was operating; the value of Wind Energy Production Tax, if any, for the qualified business, and
other information DEED may request.

If the qualified business does not submit its report, the City must mail a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the qualified business fails to provide a report, the qualified business must pay to the City a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000.

Annual reports from the City will be filed with DEED no later than April of each year.

K. Failure To Meet Goals

Qualified businesses who receive tax benefits under the JOBZ law are required to repay those tax benefits if the business:

- Ceases to operate in the Fergus Falls JOBZ Subzone;
- Is no longer a qualifying business;
- Relocates into the Fergus Falls JOBZ Subzone but does not do one of the following: maintain a 20% increased employment level or make the 10% capital investment required by Minnesota Session Laws 2003, 1st Special Session, Chapter 21, Article 1, Section 15, Subdivision 11; or
Fails to meet goals specified in the Business Subsidy Agreement with the City.

A qualified business must repay the amount of the total tax reduction listed in section 469.315, and any refund under section 469.318 in excess of tax liability, received during the two years immediately before it ceased to operate in the Fergus Falls JOBZ Subzone.

The repayment must be paid to the state to the extent it represents a state tax reduction and to the county to the extent it represents a property tax reduction. Any amount repaid to the county for the property tax exemption must be distributed to the local governments with authority to levy taxes in the zone in the same manner provided

for distribution of payment of delinquent property taxes. Any repayment of local sales taxes must be repaid to the city or county imposing the local sales tax.

For the repayment of taxes imposed under chapter 290 or 297A or local taxes collected pursuant to section 297A.99, a business must file an amended return with the Commissioner of Revenue and pay any taxes required to be repaid within 30 days after ceasing to do business in the Fergus Falls JOBZ Subzone. The amount required to be repaid is determined by calculating the tax for the period or periods for which repayment is required without regard to the exemptions and credits allowed under section 469.315. The provisions of chapters 270 and 289A relating to the Commissioner of Revenue's authority to audit, assess, and collect the tax and to hear appeals are applicable to the repayment required. The Commissioner of Revenue may impose civil penalties as provided in chapter 289A, and the additional tax and penalties are subject to interest at the rate provided in section 270.75, from 30 days after ceasing to do business in the Fergus Falls JOBZ Subzone until the date the tax is paid. The Commissioner of Revenue may assess the repayment of taxes any time within two years after the business ceases to operate in the Fergus Falls JOBZ Subzone, or within any period of limitations for the assessment of tax under section 289A.38, whichever period is later.

For the repayment of taxes imposed under chapter 297B, a business must pay any taxes required to be repaid to the motor vehicle registrar, as agent for the Commissioner of Revenue, within 30 days after ceasing to do business in the zone. The provisions of chapters 270 and 289A relating to the Commissioner of Revenue's authority to audit, assess, and collect the tax and to hear appeals are applicable to the repayment required. The Commissioner of Revenue may impose civil penalties as provided in chapter 289A, and the additional tax and penalties are subject to interest at the rate provided in section 270.75, from 30 days after ceasing to do business in the Fergus Falls JOBZ Subzone until the date the tax is paid. The Commissioner of Revenue may assess the repayment of taxes any time within two years after the business ceases to operate in the Fergus Falls JOBZ Subzone, or within any period of limitations for the assessment of tax under section 289A.38, whichever period is later.

For the repayment of property taxes, the county auditor shall prepare a tax statement for the business, applying the applicable tax extension rates for each payable year and provide a copy to the business. The business must pay the taxes to the county treasurer within 30 days after receipt of the tax statement. The taxpayer may appeal the valuation and determination of the property tax to the Tax Court within 30 days after receipt of the tax statement. If a property tax is not repaid the county treasurer shall add the amount required to be repaid to the property taxes assessed against the property for payment in the year following the year in which the treasurer discovers that the business ceased to operate in the Fergus Falls JOBZ Subzone.

For determining the tax required to be repaid, a tax reduction is deemed to have been received on the date that the tax would have been due if the taxpayer had not been entitled to the exemption or on the date a refund was issued for a refundable tax credit.

The commissioner may waive all or part of a repayment, if the commissioner, in consultation with the Commissioner of Deed and appropriate officials from the local government officials in which the qualified business is located, determines that requiring repayment of the tax is not in the best interest of the state or the local government units and the business ceased operating as a result of circumstances beyond its control, including, but not limited to:

- (1) a natural disaster;
- (2) unforeseen industry trends; or
- (3) loss of a major supplier or customer.

A recipient that fails to meet the terms of a subsidy agreement may not receive a business subsidy from any grantor for a period of five years from the date of failure or until a recipient satisfies its repayment obligation under this section, whichever occurs first.

L. Funding To Cover Administrative Costs

Administration costs will be financed through an initial application fee of \$1,500.00 along with an annual maintenance fee of \$300. The application fee must be submitted with the application and is non-refundable. The City will bill the qualified business annually for the maintenance fee. Fees will be reviewed periodically to ensure that they are adequate to cover administrative costs. Adjustments to the fees will be made as necessary.